

**UNITED STATE DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

KIRK DAHL, et al.,	)	
	)	
Plaintiffs,	)	No. 1:07-cv-12388-EFH
	)	
v.	)	
	)	<b>ORAL ARGUMENT REQUESTED</b>
BAIN CAPITAL PARTNERS, LLC, et al.,	)	
	)	
Defendants.	)	

**DEFENDANTS’ OMNIBUS MOTION FOR SUMMARY JUDGMENT  
AS TO COUNT ONE OF THE FIFTH AMENDED COMPLAINT**

Pursuant to Fed. R. Civ. P. 56 and Local Rules 56.1 and 7.1, Defendants, through their undersigned counsel, respectfully move for summary judgment as to Count One of Plaintiffs’ Fifth Amended Complaint (“5AC”). As grounds for this motion, Defendants respectfully state that after significant merits discovery, Plaintiffs have failed to meet their burden as required under well-established legal principles applicable to summary judgment motions in antitrust conspiracy cases and, therefore, Defendants are entitled to judgment as a matter of law on the claims asserted in Count One of the 5AC.

In support of this motion, Defendants rely on the following documents, all of which are being filed under seal contemporaneously herewith pursuant to this Court’s Order of July 2, 2012 (granting Docket No. 605): (i) Defendants’ Memorandum in Support of Their Omnibus Motion for Summary Judgment as to Count One of the Fifth Amended Complaint; (ii) Defendants’ Local Rule 56.1 Statement of Material Facts as to Which There is No Genuine Issue to be Tried; (iii) the Declaration of Joseph Tringali in Support of Defendants’ Omnibus Motion for Summary Judgment as to Count One of the Fifth Amended Complaint (together with the exhibits thereto); and (iv) the Declaration of Professor Paul A. Gompers (together with the exhibit thereto).

**WHEREFORE**, for all of the above-stated reasons, Defendants respectfully request that this motion be **ALLOWED**, and that the Court grant the following relief:

- (i) Enter judgment for Defendants dismissing Count One of the 5AC with prejudice; and
- (ii) Such other and further relief as this Court deems just and appropriate.

**REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(D), Defendants respectfully request a hearing for the presentation of oral argument regarding the present Motion for Summary Judgment.

Dated: Boston, Massachusetts  
July 23, 2012

Respectfully Submitted,

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**LOCAL RULE 7.1 CERTIFICATION**

Pursuant to Local Rule 7.1(A)(2), I hereby certify that counsel for Defendants conferred with counsel for Plaintiffs and attempted in good faith to resolve the matter presented by this motion, but was unable to do so.

/s/ Kevin M. McGinty  
Kevin M. McGinty

**CERTIFICATE OF SERVICE**

I, Kevin M. McGinty, hereby certify that on July 23, 2012, the foregoing document was served upon the attorneys of record for each party by transmission through the Court's electronic case filing system.

/s/ Kevin M. McGinty  
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